IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.67 OF 2006

Shri Shiv Kumar Gupta, .. Petitioner.
Vs
The Union of India and anr .. Respondents.

Mr Mathews Nedunpara i/b Mr Ravi Ratessa, for the petitioner.
Mr D.N.Salvi, for respondent nos 1 and 2.
Mrs M.M.Deshmukh, APP for the respndent-State.

CORAM : D.B.BHOSALE, J.

DATED : 26th July, 2006

P.C.:
1. Heard the learned counsel for the parties.

2. By this petition, the petitioner has prayed for quashing of the criminal complaints,being C.C.Nos 3355-3360 of 2002 pending before the Court of Special Metropolitan Magistrate, Mumbai, filed by the respondent-complainant against the petitioner under section 138 of the Negotiable Instruments Act (for short, "the Act"). The complaint was filed in 1995, the process was issued and served on the petitioner in or about 1995. However, the petition, seeking to quash the complaint, is filed in this court in January, 2006. In the circumstances, this petition deserves to be dismissed on the ground of latches and gross delay.

3. A bare perusal of the complaint and the

documents referred to therein were sufficient to issue process particularly in view of the fact that all the documents referred to in the complaint have presumptive value in law. It is clear from the averments in the complaint that the cheques were duly signed by the petitioner, they were deposited by the complainant and were dishonoured and that they were returned by the Bank along with the return memo. It is against this backdrop, I find no error on the part of the learned Magistrate in issuing the process against the accused.

4. The submission of the learned counsel for the petitioner that the presumption of law under section 139 read with section 146 of the Negotiable Instruments Act, is a rebuttable presumptive and, that the petitioner may be allowed to rebut the same in the present petition cannot be accepted. The petitioner will have to face trial and rebut the presumption during trial. I am informed across the bar that the accused has been avoiding to appear before the Magistrate's Court and as a result of which the learned Magistrate has to issue proclamation under section 82 of the Cr. P. C. I was not inclined to entertain this petition in view thereof and in view of the fact that the complaint is based on the documents which have presumptive value in law. The learned

Advocate for the petitioner, however, submitted that the cheques were not issued in discharge of legally enforceable liability. In other words, he submitted that merely because the cheques were issued does not mean that they were issued against legally enforceable liability. He further invited my attention to the subsequent developments which occurred after 1998. In my opinion, the subsequent developments cannot be taken recourse to contend that no offence under section 138 was committed when the cheques were dishonoured. Whether the cheques were issued against the legally enforceable liability or not, can be considered only during trial and it cannot be appreciated in the present petition in view of presumption of law available under section 139 of the Act. The judgment relied upon by the learned counsel for the petitioner in R.P.Kapur Vs State of Punjab, AIR 1960 Supreme Court 866 is of no avail to the petitioner in view of the peculiar facts and circumstances of the case and the provisions of Chapter XVII of the Act, which came to be inserted in 1988. In the circumstances, this writ petition is dismissed. It is open for the petitioner to make an appropriate application before the learned Magistrate under section 147 of the Act in view of the subsequent developments. If such an application under section 147 of the Act is made by the applicant same may be

considered in accordance with law.

(D.B.BHOSALE,J.)